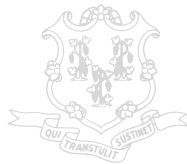


OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 14-88—sHB 5573
Commerce Committee

AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT

SUMMARY: This act gives property owners investigating and remediating contaminated property more options for complying with the Department of Energy and Environmental Protection's (DEEP) requirements for completing these tasks. It allows those participating in DEEP's Voluntary Remediation Program to submit interim verifications. Such verifications signify that a property was remediated according to DEEP standards, except for groundwater undergoing long-term remediation and monitoring. The act also allows participants to submit interim or final verifications for part of a property instead of waiting until the entire property is remediated.

By law, property owners may begin to investigate and remediate a property under the Voluntary Program before they decide to transfer or convey it, a decision that subjects them to Transfer Act deadlines for investigating and remediating the contamination. The act gives property owners who do not participate in the Voluntary Program more latitude in performing these tasks under the Transfer Act. It allows the property owner or the party that agrees to certify the property's remediation to submit an interim instead of a final verification. It also provides a brief period during which the certifying party may delay recording in the land records restrictions on how the remediated site may be used.

The act exempts more property from the Transfer Act. By law, a property, or a business operating on it, is subject to the act if it generated more than 100 kilograms (220 pounds) of hazardous waste in any month. The act excludes the amount of removed or abated building materials, such as asbestos, when calculating the amount of generated waste. Waste generated by soil, groundwater, or sediment remediation is already excluded.

The act also exempts property municipalities take by eminent domain under any statute, not just those authorizing takings for redevelopment purposes, and further exempts these sites from the Transfer Act when a municipality conveys the site to another party, as existing law allows for sites taken under the redevelopment statutes.

Lastly, the act allows the Department of Economic and Community Development (DECD) commissioner to forgive or delay repayments of brownfield loans made to private developers, not just municipalities and regional entities, as existing law allows.

EFFECTIVE DATE: Upon passage

INTERIM AND PARTIAL VERIFICATIONS

Voluntary Remediation Program

The act gives the parties responsible for determining a property's environmental condition and certifying its remediation (certifying parties) more latitude when doing so under DEEP's Voluntary Remediation Program. The program allows the certifying parties to investigate and remediate the property before its owner decides to transfer or convey it. Participating in the program allows the certifying parties to complete these tasks on their own schedule and use the results to verify the property's remediation when they are ready to transfer or convey it. The alternative is to perform them after the owner decides to transfer or convey the property, at which point they must comply with Transfer Act deadlines.

Certifying parties participating in the Voluntary Program must retain a licensed environmental professional (LEP) to verify that the property was investigated and remediated according to DEEP standards (unless the DEEP commissioner notifies them that he must review and approve these tasks). Prior law allowed the LEP to verify that the entire property or the release area was investigated according to those standards. (The release area is that part of a property where hazardous waste was discharged, spilled, or released.) The act explicitly allows the (1) property or release area to be investigated and remediated in sections and (2) LEP to verify that each section was investigated and remediated according to DEEP standards, instead of waiting until the entire property or release area has been remediated.

If there is contaminated groundwater beneath the property, the act also allows the LEP to verify that the property, part of the property, or the release area, was investigated and remediated if the contaminated groundwater is undergoing long-term remediation and monitoring (interim verification). The LEP may do so by submitting his or her written opinion on a DEEP form indicating that:

1. the investigation was performed according to the prevailing DEEP standards and guidelines;
2. the remediation was completed according to DEEP's remediation standards, except for the groundwater;
3. the groundwater is undergoing remediation, but has not been remediated to the applicable groundwater remediation standards; and
4. exposed pathways to the groundwater area meet DEEP's remediation standards.

The written opinion must identify how the groundwater will be remediated, indicate how long it will take to remediate it, and describe what needs to be done for remediation. (These criteria are the same as those for interim verification under the Transfer Act.)

Conveyance under the Transfer Act

The act also provides latitude to the parties that do not participate in the Voluntary Program and consequently must investigate and remediate a property under Transfer Act deadlines. Prior law allowed them to convey or transfer all or

OLR PUBLIC ACT SUMMARY

part of the property only after the certifying party certified that it was investigated and remediated to DEEP standards (final verification).

The act allows the certifying party to convey or transfer all or part of the property after completing an interim verification. It allows them to do so regardless of when they submitted the forms to DEEP under the Transfer Act. The forms generally indicate the property's environmental status, describe the remediation plan, or certify that the property's remediation is according to DEEP standards.

In allowing parties to submit interim verifications, the act implicitly requires them to record an environmental land use restriction (ELUR) in local land records when they submit these verifications to DEEP. (ELURs restrict how a remediated property can be redeveloped.) But it also creates an eight-month window in which an owner may delay recording an ELUR.

Under the act, a party that submits the interim verification for a property on or before December 31, 2014 does not have to record an ELUR until September 1, 2015. When it records the ELUR, it must do so as existing law requires. If the party fails to meet the September 1 deadline, its failure to do so invalidates the interim verification, and the DEEP commissioner cannot recognize it.

The commissioner may audit interim verifications under the same conditions as he may audit final verifications under the law.

MODIFYING BROWNFIELD LOAN REPAYMENT TERMS

The act allows the DECD commissioner to modify the terms and conditions of brownfield remediation loans made to private developers, not just those made to municipalities, economic development agencies, regional development agencies, and regional planning organizations, as the law already allowed. Prior law allowed her to delay or forgive principal, interest, or principal and interest payments if she determined that it was in the state's best interest to do so. The act allows her to take these steps if she determines that it is in the state's best interest from an economic or community development perspective.

OLR Tracking: JR:LH:PF:ro